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State lawsuit is another blow to teachers union

By Bill Ruthhart on December 03, 2009

Secretary of state's office wants to freeze assets of organization in effort to recover school districts' money

In a bid to recoup some of the \$23 million owed to Indiana school districts, Secretary of State Todd Rokita's office has filed a lawsuit to freeze the assets of the Indiana State Teachers Association.

The civil complaint, filed in Marion Superior Court, is the latest in a series of blows to the state teachers union, which faces a \$67 million deficit and has been under investigation for mishandling investments that supported its long-term disability and health insurance programs.

The Indianapolis Star reported in May that eight trustees and two directors who oversaw ISTA's Insurance Trust had received subpoenas from the secretary of state's Securities Division, but the lawsuit filed Wednesday was the first public acknowledgement of a state investigation. ISTA's handling of the insurance programs also has been the subject of an FBI probe, sources close to the matter have told The Star.

Rokita's effort to freeze ISTA's assets came as its acting trustee, Ed Sullivan, had worked to cut deals with school districts once enrolled in the union's health insurance program.

ISTA stopped offering health insurance to school districts in June after the National Education Association, through Sullivan, took over the troubled union. However, the union still owed school districts money for unused health insurance premium credits they earned after paying more into the program than they received in claims.

When the union discontinued its health insurance program, state regulators insisted ISTA was still responsible for reimbursing districts for the amount of their credits. The lawsuit alleges ISTA owes districts \$23 million in credits.

According to ISTA, 30 districts were enrolled in the health insurance program, but Sullivan said Wednesday that only 21 say the union owes them money.

During the past few weeks, Sullivan has been traveling the state, trying to work out deals with those districts.

Sullivan's offer: Districts could immediately receive 25 percent of what they think ISTA owed them or 33 percent if they take the amount over a three-year period.

"We've tried to structure something with them to resolve the situation," he said. "A number of school districts have indicated they are very interested in that."

Figuring out what's owed

That could explain the timing of Rokita's lawsuit, which asks to have a third party determine how much is owed to the districts.

"The latest evidence indicates that ISTA is now offering these Indiana school corporations pennies on the dollar in an effort to wipe away their liability," Rokita said. "The purpose of this action is to request that an independent third party be assigned to ensure transparent accounting and equitable distribution of any remaining funds."

Any third-party analysis or freeze on ISTA's funds would not affect the payment of claims to 650 school employees previously covered by the union's long-term disability program, which it discontinued this summer.

Sullivan declined to specifically address the lawsuit filed Wednesday, saying ISTA's attorneys were reviewing it.

Rokita's suit came as several of the school districts previously enrolled in the health insurance program were weighing a lawsuit of their own.

School boards in at least two school districts, Delphi and Caston, already had voted to join a suit, which was being prepared by the Hamilton County law firm of Church, Church, Hittle & Antrim. David Day, the attorney handling the matter, did not return phone calls seeking comment.

Ralph Walker, the superintendent in Delphi, predicted as many as 15 school districts would join that suit but said he was even more encouraged to see Rokita's office take action.

"This is very good news, because this offer to get 25 percent of your money or 33 percent over three years -- that's not an acceptable offer," Walker said. "I'm very encouraged about this, because those are taxpayer dollars that should not have been mismanaged."

ISTA came under fire in May when state regulators noticed the union's health and long-term disability insurance programs faced a \$67 million deficit.

A report produced by an independent financial firm hired by regulators showed investments in ISTA's Insurance Trust had an unusually high percentage of risky investments and an unusually

high volume of trades, and its investment broker received an increase in his commissions even as the fund's assets plummeted.

In August, the union sued its former executive director, Warren L. Williams, and Robert Frankel, former director of the trust, for what Sullivan called "terrible investments, horrible fiscal behavior."

Wrongdoing also alleged

Wednesday's lawsuit also included four counts of wrongdoing to support freezing ISTA's assets but did not single out any individuals for sanctions. However, that could come later as the investigation continues.

Rokita and Securities Commissioner Chris Naylor declined any further comment on the lawsuit or investigation.

The suit alleges ISTA failed to follow state law in properly registering the securities it offered with the state; transacted business as investment advisers without proper state registration; supervised those acting as investment advisers without proper registration; and made false material statements regarding the financial health of the fund, its investment strategy, "an inadequacy of reserves" and "unsuitability of investments."

Antony Page, a securities law professor at the Indiana University School of Law-Indianapolis, said the suit, on its face, has merit.

"This complaint raises legitimate concerns, without a doubt," he said. "To withhold information about an investment or not disclose the risk of an investment, that's a very basic no-no. Any securities lawyer is going to know right away there's a major problem."